Supreme Court, U.S.
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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1994

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WILLIAM WALSH
Petitioner,

vs.

SOUTHWEST FLAGLER ASSOCIATES, INC.
Respondents.

---

PETITION FOR WRIT OF CERTIORARI
TO THE THIRD DISTRICT COURT OF APPEAL
OF FLORIDA

---

# PETITION FOR WRIT OF CERTIORARI

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William Walsh, Pro se
14532 Pebble Beach
Orlando, Florida 32826
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19pp

## QUESTIONS PRESENTED

Testimony, that was to begiven by the medical doctor, who performed the surgery for the injury sustained in the accident, was ruled **"...inadmissible..."** by the trial court, because the surgeon was an employee of the Federal Government.

1. **Was the Court permitted to exclude testimony from a surgeon that is working for the Federal Government?**

There were records of the surgeon that were ruled **"...inadmissible..."** for the Plaintiff as they were records of someone employed by the Federal Government, however, the trial court permitted the Defendant to use these records to show the jury that the Plaintiff had surgery and loss of work and wages for reasons **"...unrelated to the accident."**

**2. Was the Court correct in allowing the Defendant to use records of a Federal Government employee that were rule "...inadmissible..." for the Plaintiff, because they were records of a Federal Government employee?**

During direct examination by the defense counsel, the independant medical examiner read from records of the surgeon who was employed by the Federal Government. These records were not authenticated by the Federal Government employee.

**3. Was the Court correct in allowing records from an employee of the Federal Government to be read when these records were ruled "...inadmissible..." for the Plaintiff to use by the trial court?**

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Petitioner, WILLIAM WALSH, respectfully requests that a Writ of Certiorari be issued to review the Judgement of The Third District Court of Appeal of Florida, entered on June 21, 1994, which Affirmed the Judgement of Petitioner previously entered in the Eleventh Circuit Court in and for Dade County, Florida.

## OPINION BELOW

The opinion of the Third District Court of Appeal of Florida Affirming the decision of the Lower Tribunal is set forth in the Appendix.

## STATEMENT OF JURISDICTION

The decision of the Third District Court of Appeal Affirming the decision of the Lower Tribunal was rendered on June 21, 1994. A Petition for Rehearing was denied on July 19, 1994. The jurisdiction of this Court to review the decision by Writ of Certiorari is invoked pursuant to the law.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides:

> No State shall deprive any person of life, liberty or property, without due process of law; nor deny any person within it's jurisdiction the equal protection of the law.

## STATEMENT OF THE CASE

This is a case where the Plaintiff, WILLIAM WALSH, fell down the steps, in the dining room, owned and operated by the Defendant. Unknown to the Plaintiff, an eyewitness saw two waiters collide on the steps in the dining room, spilling trays of food and drinks to the steps. Approximately "...twenty-five minutes..." later the Plaintiff started down those same steps, when, "...wham, just like a bellyflop...on his front...fell fifteen to twentyfive feet..."

Ventral hernias, caused by the accident, formed in the abdomen of the Plaintiff. The Plaintiff was admitted into the VA Hospital where surgery was performed by a surgeon at the VA hospital. This surgeon was subpoenaed by the Plaintiff, however, was introduced to the Court, by defense counsel, as "...an expert." When the trial

court asked, "Who is presenting her testimony?" and the Plaintiff stated, "I am." defense counsel said, "That begins a precarious problem. I didn't know you were going to get this witness under the authority of the VA. She comes here as a records custodian. She has been told by her administrator, she is not entitled to give opinions." The trial court responded, "Here is the problem we have Mr. Walsh. She is an employee of the Federal Government. Generally speaking, federal government employer's take a position that their employee's are not bound to respond to subpoenas in the State Court. It relates to supremacy of the Federal Government. (This is all recorded in the trial transcript on pages 49-51).

The trial court would not allow this surgeon to testify or her records used as evidence. These records would prove the surgery was

needed to repair ventral hernia's times four (4), caused when the Plaintiff "...fell on his abdomen...at the dogtrack."

This surgeon was an expert witness, not a records custodian, as proclaimed by defense counsel, agreed to by the trial court and affirmed by the District Court of Appeal. This surgeon was not permitted to testify, however, the trial court allowed defense counsel to use these records and her deposition that was taken during the lunch break on the first day of the trial. The doctor would not sign the deposition as it could not be read or approved and the Court ruled this evidence as "...inadmissible..." for the Plaintiff, but admissible for the Defendant.

On page 270 of the trial transcript, defense counsel, Thomas Valerius was cross examining a witness who testified about the loss of income by the Plaintiff because of loss

of work.

MR. VALERIUS: The evidence will show he underwent surgeries unrelated to this accident, unrelated. No doctor is going to come in and say they are related and he was out of work for these problems (TT 270).

MR. VALERIUS: Did you know it was five days later that he was admitted for surgery on his stomach, did you know that?

MR. VALERIUS: Did you know that on Friday the first week he had set up surgery on his stomach, did you know that?

MR. VALERIUS: He was hospitalized for nine days. He was out of work because of hospitalization. The suchures were removed, did you know that?

MR. VALERIUS: Did you know that he was back in the hospital on April 29, for

herniation, did you know that?

MR. VALERIUS: And on March 29, you went to the VA Hospital to schedule surgery, is that correct?

MR. VALERIUS: You were admitted in the hospital April 8, 1994, and you were hospitalized, I believe, some eleven days?

MR. VALERIUS: And were you back in the hospital on the 29th?

MR. VALERIUS: After that, for quite awhile, you didn't work, is that correct?

The trial court allowed defense counsel to use records from a Federal Government employee that was not permitted to testify.

## REASONS FOR GRANTING THE WRIT

I.

This petition for a writ of certiorari presents the significant question of whether as a matter of statutory construction - or due process of law - an employee of the Federal Government, who has performed surgery for an injury that was caused by the accident in question, can testify as an expert witness in a State Court? A case where the Defendant, during opening statement, did accept the negligence for the fall.

This surgeon may have been told by superiors not to give an opinion, however, did perform the surgery and her surgical records would prove the reason for the surgery was ...patient fell on his abdomen...at the racetrack, causing his initial hernia." Also, "...fell on his abdomen...at the dogtrack."

An eye witness, who was concealed by the

Defendant from November 18, 1989, until found, by the Plaintiff, May 14, 1991, saw the accident and what cause it. This witness testified that he saw the Plaintiff "...fall forward, doing a belly-flop...falling fifteen...to twenty-five feet."

During his Opening Statement, defense counsel told the jury, "We are not saying the man didn't fall. Evidence will prove that. But, what happened after the fall." Later counsel said, "...I didn't know you were going to get this witness under the authority of the VA."

This is why this writ must be granted. If this Federal Government employee was ordered to testify, a different verdict would have been handed down.

II.

How can evidence be "...inadmissible..."

for one party and allowed by another? This is what turned the jury and had this not been allowed, the verdict would have certainly gone for the Plaintiff, as it should have.

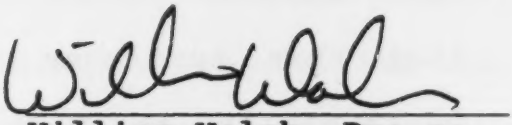
The Third District Court of Appeal affirmed this decision of the Lower Tribunal, knowing that this testimony and records were only available for the Defendant.

These are the reasons that this writ must be granted.

## CONCLUSION

For the reasons stated herein, the Petition for Writ of Certiorari must be granted.

Respectfully submitted,



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# APPENDIX

IN THE CIRCUIT COURT
OF THE 11TH JUDICIAL
CIRCUIT IN AND FOR
DADE COUNTY, FLORIDA

WILLIAM WALSH, et al.,
Plaintiff,

Case No. 90-52609

vs.

**FINAL JUDGEMENT**

WEST FLAGLER ASSOC.
d/b/a FLAGLER DOG
TRACK.
Defendants.
_____/

This action having been tried before a duly empaneled jury and a verdict for the Defendant, WEST FLAGLER ASSOCIATES, d/b/a FLAGLER DOG TRACK, having been rendered on the 24th day of July, 1992, in words and figures as follows to wit:

"We the jury find for the Defendant.

So say we all.

Wilber Williams
(Printed, not signed)
Foreperson

Dated: July 24, 1992"

and said verdict having been duly received, filed and recorded, it is

ORDERED AND ADJUDGED that Final Judgement be, and the same is hereby entered in favor of the Defendant and against the Plaintiff's and the Defendant shall go hence without day and shall have and recover of and from the Plaintiff it's tazable costs, if any, for all of which said sum let execution issue.

DONE AND ORDERED in Chambers at Miami, Dade County, Florida this 24th day of July, 1992.

s/ Paul Siegel
CIRCUIT JUDGE

IN THE DISTRICT COURT

OF APPEAL OF FLORIDA

THIRD DISTRICT

JANUARY TERM, A.D.

1994

| | | |
|---|---|---|
| WILLIAM WALSH<br>Appellant, | ** | |
| vs. | ** | Case No. 92-01920 |
| WEST FLAGLER<br>ASSOCIATES, LTD.<br>Appellee. | ** | |

Opinion Filed: June 21, 1994.

An Appeal from the Circuit Court for Dade County, Paul Siegel, Judge.

William Walsh, in proper person.

Marlow, Connell, Valerius, Abrams, Lowe and Adler. Joseph Lowe, for Appellee.

Before BARKDULL, NESBITT AND LEVY, JJ.

PER CURIAM

Affirmed

IN THE DISTRICT COURT

OF APPEAL OF FLORIDA

THIRD DISTRICT

JULY TERM, A.D. 1994

JULY 19, 1994

WILLIAM WALSH
Appellant,

vs.

WEST FLAGLER
ASSOCIATES, LTD.
Appellee

** Case No. 92-01920

Upon consideration, appellant's motion for rehearing of opinion is hereby denied.

BARKDULL, NESBITT AND LEVY, JJ.

CONCUR.

A True Copy

ATTEST:

Louis J. Spalone

Clerk, District Court of Appeal,

Third District

By: s/ Ann E. Geonin
Deputy Clerk

cc: William Walsh Joseph Lowe
/NB

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No. 94-1146

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# Supreme Court of the United States

October Term, 1994

WILLIAM WALSH,

*Petitioner,*

*vs.*

SOUTHWEST FLAGLER ASSOCIATES, INC.,

*Respondent.*

*On Petition for Writ of Certiorari to the District Court of Appeal of Florida, Third District*

## RESPONDENT'S BRIEF IN OPPOSITION

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No. 94-1146

In The

# Supreme Court of the United States

October Term, 1994

WILLIAM WALSH,

*Petitioner,*

*vs.*

SOUTHWEST FLAGLER ASSOCIATES, INC.,

*Respondent.*

*On Petition for Writ of Certiorari to the District Court of Appeal of Florida, Third District*

## RESPONDENT'S BRIEF IN OPPOSITION

Respondent, SOUTHWEST FLAGLER ASSOCIATES, INC. (hereinafter Southwest Flagler), respectfully requests this Court to deny the Petition for Writ of Certiorari which seeks review of the District Court of Appeal of Florida, Third District of Florida's *per curiam* affirmance in this case. The decision is reprinted in Petitioner's Appendix (A-1) and is reported at 641 So. 2d 81 (Fla. 3d D.C.A. 1994).

## STATUTES INVOLVED

Respondent does not believe that there are any federal constitutional provisions, statutes or regulations involved in this case.

## STATEMENT OF THE CASE

Petitioner, represented by counsel, filed suit against Southwest Flagler in October, 1990, alleging negligence in a trip and fall accident at Respondent's dog track on November 18, 1989. In October, 1991, Walsh's counsel moved to withdraw and the motion was granted. Thereafter, Walsh proceeded pro se. The case was tried over the five-day period July 20-24, 1992, and resulted in a jury verdict for Respondent. Walsh appealed the judgment to the District Court of Appeal, Third District of Florida, which affirmed in a *per curiam* opinion (A-1). A motion for rehearing was denied (A 2-3).

## STATEMENT OF THE FACTS

On November 18, 1989, Walsh, his wife and daughter were at the Respondent's dog track, known as the Flagler Dog Track. They arrived at approximately 7:15 p.m. and went up to the clubhouse dining room for dinner. The dining room is tiered so that one level of tables is higher than the other, to permit the patrons to look out and view the dog races. Patrons enter at the top level where the betting windows, a bar and the maitre'd's station are situated. Steps lead down from that level to the five tiers where the tables are situated. There are four steps between each tier. Mrs. Walsh testified that they were seated on the third, or middle level, in the dining room. She said that her husband ordered dinner, and, as was his custom, then left for about a half hour to look at the dogs in the paddock area and place his bets for the night. She said their dinner had arrived, but that he still had not returned to the table. She looked up toward the top of the restaurant to see if he was returning and said that she saw him at the top of the stairs when suddenly he disappeared. She claimed that she had no knowledge of an alleged incident approximately 15 to 25 minutes before Petitioner fell, where two waiters carrying trays of food and drink collided on either the top level or

the first tier, spilling food and drink. When she went up the steps to reach her husband after the fall, she did not see any debris on the stairs.

Walsh himself admitted that "what caused me to fall I have no idea." He further admitted that he saw nothing on the floor or step that would have caused the fall. He conceded that it was possible that he tripped over his own feet. And, since he had been gone a half hour he, of course, could not have any knowledge about the two waiters supposedly colliding.

Ben Geller confirmed that he was in the dining room on Saturday evening, November 18, 1989. He was the only witness who testified about two waiters colliding. He said that after the collision the two waiters, plus three bus boys, cleaned up the area. He said that Walsh fell in the same area as the collision some 15 to 25 minutes afterwards. Geller admitted that he didn't inspect the area after waiters and bus boys cleaned up the spill, nor did he inspect the stairs where the collision occurred and did not know if there was anything on the floor after the area had been cleaned.

Disputed medical testimony was presented concerning Walsh's injuries which he claimed were a result of the fall. It was undisputed that he did not see any medical provider from the night of the incident on November 18, 1989 until he saw an orthopedic surgeon on January 31, 1990, some ten weeks later. Dr. Joseph Kalbac, retained by the defense to conduct an independent medical examination, testified that Walsh suffered a strained knee as a result of the accident. The arthroscopic surgery that Walsh had post-accident in November, 1991 was the result of a long term arthritic, degenerative condition.

Walsh attempted to relate an April, 1991, surgical procedure to his abdominal area to correct a hernia condition to the accident. The trial court refused to permit the doctor who performed the

surgery to testify because the doctor stated that she could not testify within a reasonable degree of medical probability that the accident at issue was causally related to the surgery she performed:*

> THE COURT: So if I ordered you, not withstanding the VA instructions, to give us your opinion on whether there is causal relationship between the surgery that you did and the accident I gather that what you would say is that I cannot tell you within reasonable medical probability, meaning that there is greater than 50 percent probability that the surgery was caused by the accident. Is that a fair statement of where you are?
>
> THE WITNESS: Yes.
>
> THE COURT: Mr. Walsh, when we get to that point this doctor even if permitted to testify fully would not be able to give testimony that would support the admission into evidence of her testimony about the surgery because she cannot supply, even if I ordered her to testify over VA objections, she cannot testify to the threshold that you have to raise above to make her testimony admissible. So she is not going to able to

---

* The doctor performed the surgery while employed at a Veteran's hospital. Accordingly, she had been told by the Veterans Administration that as a federal employee she was not to render any opinions as to cause and effect but to only testify as a fact witness. However, since she did not have an opinion within a reasonable degree of medical probability, the issue of her not providing such an opinion was rendered moot.

testify unless you have some other expert witness who can come in and say that the surgery that was done by this doctor was caused by the accident that you had.

MR. WALSH: I don't even know that. I am not looking for that. I am being misunderstood here. I understand what you are saying. I don't care whether she wants to give the opinion or anything. The only thing I want her to do is say that on 4-9 on such and such a date that she gave me surgery for ventral hernia. Mallec mesh was used to close the incision. I wouldn't even.

THE COURT: She can't even testify to that because there is nothing in the record to show that her surgery and the use of mallec mesh was causally related to the accident that you had at Dogtrack.

MR. WALSH: What do you call a third party defendant? I thought you mean to tell me if this be true, the third party defendant, the first one that operated on me shouldn't be here.

THE COURT: That is another complication that I am not prepared to get into. We are here to try a lawsuit. We need to finish trying this lawsuit so you can get on with your life and Mr. Valerius can get on with his other cases.

MR. WALSH: Can I bring in my own, she knew right there in that she made a decision to operate on me on March 29.

> THE COURT: She made that decision. She didn't do it because you fell down at the Flagler Dogtrack and she can't testify to that, which makes her testimony in admissible [sic].

Mr. Walsh complains that though he could not call Dr. Gahtan to the stand, the defense was permitted to refer to his stomach surgery. This is merely an instance of a pro se Plaintiff not understanding the rules of evidence. Since Walsh was claiming substantial lost wages for the time he was out of work because of this accident, he clearly opened the door for the defense to show that he had stomach surgery, unrelated to this accident, and that the stomach surgery was the cause of his missing time from work. There was no error or any impropriety concerning this portion of the trial.

## REASONS FOR DENYING THE WRIT

The Petition for Writ of Certiorari to this Court must be denied as none of the issues the Petitioner addresses to this Court have any support in the law.

28 U.S.C. § 1257 provides:

> State courts; certiorari
>
> (a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant

> to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or nay commission held, or authority exercised under, the United States.

It is apodictic that this Court does not address constitutional questions not brought before and directly addressed by the State courts. *Munks v. New Jersey,* 398 U.S. 71; 90 S. Ct. 1563; 26 L. Ed. 2d 54 (1970); *Street v. New York,* 394 U.S. 576; 89 S. Ct. 1354; 22 L. Ed. 2d 572 (1969); *Owens v. Norwood Lecy,* 5 Cranch. 330, 344 (1809); *Safeway Stores Inc. v. Oklahoma Retail Grocers Assoc. Inc.*, 360 U.S. 344 (1959). The constitutional claims of the Petitioner are entirely without merit, and were not preserved for appeal. They were never raised prior to this Petition. This Court does not consider issues that were never passed upon below.

The error alleged is that a doctor was not permitted to testify to a surgical procedure that she performed on Petitioner. Walsh ignores the fact that the doctor told the trial judge that she could not causally relate the surgery to the fall at Respondent's premises. Instead Walsh attempts to create a federal/state's right issue as to whether or not the physician had permission from her former employer, the Veteran's Administration, to render any opinions.

The second purported error is that though Petitioner could not elicit testimony from the doctor concerning the surgical procedure, the defense made reference to the procedure to rebut Petitioner's lost wage claim. There are no federal issues here, but merely evidentiary rulings that have been adequately addressed by the Florida courts.

## I.

## THE ISSUES RAISED BY PETITIONER IN PETITION FOR WRIT OF CERTIORARI WERE NOT PROPERLY PRESERVED FOR APPEAL.

As a threshold matter, the Petitioner has not preserved for review here the grounds upon which he now seeks review of the decision of the Supreme Court of Florida, Third District. As a general rule, this Court will not consider issues not passed upon below. *See, Singleton v. Wulff*, 428 U.S. 106 (1976). Justice mandates that the issue on appeal be raised below so as to ensure that litigants will have a full opportunity to develop and present all relevant facts and law so as not to be surprised on appeal by a final decision of issues which they have had no opportunity to defend. *Hormel v. Helvering*, 312 U.S. 552 (1941).

The constitutional inadequacies alleged by the Petitioner in Issue I of his Petition were never raised by the Petitioner at any time in this action's extensive procedural history. That the Petitioner has not prevailed on any of the substantive claims he has fully and fairly litigated indicates that the allegations have no support in law, and in no way justifies further expense of judicial resources litigating patently meritless due process and equal protection claims. It is an elemental concept of American jurisprudence that only the constitutional issues raised in lower courts are before the Supreme Court on appeal. *See, Shelley v. Kraemer*, 334 U.S. 1 (1948). This Court cannot decide issues for the first time on review of a state court decision. *See, Bankers Life and Casualty Co. v. Crenshaw*, 486 U.S. 71 (1988); *Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 U.S. 537 (1987).

Having chosen not to do so, the Petitioner cannot, as a matter of law, now seek certiorari from this Court based upon his vague

and unsubstantiated assertions that his Fourteenth Amendment rights have been denied.

## II.

## THERE WAS NO ERROR IN THE TRIAL COURT'S EVIDENTIARY RULINGS.

The gravamen of Petitioner's argument is that the trial court made two erroneous evidentiary rulings. Unless this Court intends to usurp state evidence codes and state court interpretations of those codes, no federal claim has been made. It is submitted that even if the evidentiary rulings are wholly and entirely incorrect, this Court cannot address them. *See e.g. Green v. Neal's Lessee*, 6 Pet. 291 (U.S. 1825). Because this Court is bound by the decision of Florida's Third District Court of Appeal on the issues of Florida Law, *Jackson v. Chew*, 12 Wheat. 153 (U.S. 1827), petitioner has utterly failed to invoke this Court's jurisdiction under 28 U.S.C. § 1257. This case involves no Constitutional issues.

Walsh, a pro se litigant, totally ignorant of the Rules of Evidence, cannot comprehend that the same fact could be admissible for one reason, but inadmissible for another. Further any error is irrelevant because the evidentiary rulings affected the damages and the jury never reached that issue finding that Respondent was not negligent. Thus, even if the testimony that Walsh wanted the jury to hear was permitted into evidence, it could not have affected the outcome of the case.

### A. The Court Properly Excluded the Doctor's Testimony.

Petitioner claims that the trial court improperly excluded the testimony of the Doctor who performed stomach surgery on him in April, 1991. The record reflects that there was a lengthy

discussion as to whether or not the doctor, employed at the time of the surgery by the federal government, could render a cause and effect opinion (an opinion that the fall at Respondent's facility was the reason the surgery was necessary) because the Veterans Administration took the position that their doctors could not render opinions. However, that issue was mooted when the doctor advised the court that even without such a prohibition she could not testify within a reasonable degree of medical probability that the stomach surgery was the result of the fall in November, 1989:

> THE COURT: So if I ordered you, not withstanding the VA instructions, to give us your opinion on whether there is causal relationship between the surgery that you did and the accident I gather that what you would say is that I cannot tell you within reasonable medical probability, meaning that there is greater than 50 percent probability that the surgery was caused by the accident. Is that a fair statement of where you are?
>
> THE WITNESS: Yes.
>
> THE COURT: Mr. Walsh, when we get to that point this doctor even if permitted to testify fully would not be able to give testimony that would support the admission into evidence of her testimony about the surgery because she cannot supply, even if I ordered her to testify over VA objections, she cannot testify to the threshold that you have to raise above to make her testimony admissible. So she is not going to able to testify unless you have some other expert witness who can come in and say that the

> surgery that was done by this doctor was caused by the accident that you had.

The Florida Evidence Code § 90.101 Florida Statutes (1991) *et seq.* is patterned after, and is similar to, the Federal Rules of Evidence. § 90.401 provides:

> DEFINITION OF RELEVANT EVIDENCE
>
> Relevant evidence is evidence tending to prove or disprove a material fact.

The doctor's testimony herein was totally irrelevant to the cause below. It would not have tended to either prove or disprove any material fact. That Walsh had stomach surgery nearly 18 months after the fall at the dog track was never questioned. However, the fact was irrelevant to the lawsuit as the doctor could not testify within a reasonable degree of medical probability, as she had to for her testimony to be admissible, that the accident necessitated the surgery. *Gooding v. University Hospital Building, Inc.*, 445 So. 2d 1015 (Fla. 1984). Therefore, since she could not opine within a reasonable degree of medical probability the trial court properly excluded her from testifying.

**B. The Court Correctly Permitted Reference By the Defense of the Stomach Surgery.**

Though Petitioner could not causally relate the stomach surgery to the accident, that does not mean that no reference to the surgery could be made during trial. Walsh attempted to exaggerate his damages by claiming lost wages for the period he was out of work because of the stomach surgery. Surely, there was no violation of his due process rights because the jury learned that the reason he was out of work in the Spring of 1991 was because he had stomach surgery unrelated to his fall in November, 1989 at

Respondent's premises. Evidence can be admissible for one reason and inadmissible for another. ***Barnett v. Butler***, 112 So. 2d 907 (Fla. 2d D.C.A. 1959). This proposition is applicable here. Walsh wanted to relate the surgery to the accident so that he could be compensated for the medical expense and related lost wages, but was unable to do so because the doctor did not believe the two events were related. Therefore, reference to the surgery during his case was properly excluded. Respondent made reference to the surgery for the purposes of defending the lost wage claim. Nothing more was done than advising the jury that one of the reasons Walsh lost time from work in 1991 was because of unrelated surgery. It would have been error to deny Respondent the right to so advise the jury.

### C. Any Error was Harmless

Assuming *arguendo* that the court erred in either or both of the evidentiary rulings complained about by Petitioner, any such error was harmless and did not affect the outcome of the trial. Walsh lost the case. He failed to prove that the Respondent was negligent in maintaining the premises. He didn't know why he fell or if he tripped over his own feet. The jury found against him on liability. They never reached the damage issue. Therefore, whether or not there was any error is irrelevant as the two rulings affected the damage aspect of the case and not the liability aspect of the case. The jury never reached the issues of damages.

## CONCLUSION

For these reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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Supreme Court, U.S.
FILED
MAR 14 1995
OFFICE OF THE CLERK

(3)

No. 94-1146

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In The

*Supreme Court of the United States*

October Term, 1994

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WILLIAM WALSH,

Petitioner,

v.

SOUTHWEST FLAGLER ASSOCIATES, INC.,

Respondent.

---

On Petition for a Writ of Certiorari to the District Court of Appeal of Florida, Third District

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# PETITIONER'S REPLY BRIEF

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**PETITIONER'S REPLY BRIEF**

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Respondents' arguments only highlight why this Court should grant this petition. Respondents' Statement of the Case and Statement of the Facts were inaccurately presented to the Third District Court of Appeal and are continuing to do the same before this Honorable Court. It was these inaccurate statements that led the Appellate Court to affirm their opinion.

Mr. Lowe quotes citations to confirm that Petitioner's three questions were not properly preserved for appeal.

Understandably, Mr. Joseph Lowe, Counsel of Record, had to rely on the trial transcripts, and counsel's motions, to substantiate the facts, since Mr. Lowe was not at the trial. However, Petitioner recognizes several inaccuracies in Mr. Lowe's translation of the trial transcript and would like to make these known first, to this Court, before replying on Respondent's answers to the questions presented by the Petitioner in the Writ of Certiorari.

## PETITIONER'S REBUTTAL TO
## (Respondent's Statement of the Case)
## Statement of the Facts)
## (Opp. 2-6)

Mr. Lowe States, **Petitioner, represented by counsel, filed suit.....in October, 1990...* alleging negligence in a trip and fall accident..."****

After the Court affirmed their opinion, Petitioner

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* Mr. Lowe repeatedly makes statements, in which he claims to be facts, however, they are misrepresentations of the facts. The documented fact is, Petitioner pro se, filed this suit in October of 1990. There was no counsel involved. Through a motion filed by Mr. Lowe's lawfirm, this was quashed by the Court and in April, 1991, Petitioner, with counsel, filed Plaintiff's Amended Complaint. Mr. Lowe either neglected to look at the Court Records or Defendant's Motions in filing his Appellee's Answer Brief before the Third District Court of Appeal and his Respondent's Brief of Opposition with this Court. They are one and the same.

complained to the Florida Bar, however, the Florida Bar contends, **"There is no difference between a slip and fall and a trip and fall." (Case No. 95-70,034 (11P).**

Then Mr. Lowe says, **"In October, 1991, Walsh's counsel moved to withdraw and the motion was granted."*****

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** Mr. Lowe then states, **"...alleging negligence in a trip and fall accident."** (Opp. 2). What a travesty of justice. If Mr. Lowe would have looked at the Complaint, Count I, 8. **"...when he was caused to slip and fall on ice cubes and/or water, and/or another foreign substance negligently left on the stairs..."** Defense counsel for the trial, Thomas Valerius, during his Opening Statement stated, **"Gentlemen, folks, let me tell you. No one is denying the man slipped and fell. The evidence will show a report was made by the nurse."** (TT 134). The report by the nurse stated, **"...slipped on a napkin and fell..."**

Finally defense counsel said, **"Mr. Ben Geller, eye witness, will tell you he saw this fella...slip and fall...I don't know belly whop or belly flop, but he saw him fall." (TT 140).** Mr. Geller stated in his deposition only, **"...he came down and wham, just like a belly-flop. That's what it was."** (Dep. 15). For the trial court to allow words from counsel like **"...belly whop..."** knowing that Mr. Geller is Italian. Mr. Geller and Mr. Valerius spoke in the hallway just before trial. Thomas Valerius found out before the trial that Ben Geller was Italian and used these words when referring to Mr. Geller's testimony.

***On September 9, 1991, Petitioner dismissed counsel.September10, 1991, counsel motioned to withdraw stating, **"Plaintiff, WILLIAM WALSH, has raised a dissatisfaction with counsel resulting in an irreconcilable conflict.** This resulted from Petitioner's counsel negligently allowing the Defendant to

During the trial there were two Corporate Representatives introduced, by defense counsel, Thomas Valerius. On the first day of the trial, Mr. Valerius introduced an imposter, Anthony Fuentas **(TT 82)**, and the second day, Mr. Armando Prats, the Corporate Representative **(TT 226)**, was there for the corporation. The trial court knew this deception, however, did nothing to correct it.

It's understandable why Mr. Valerius didn't want Armando Prats at the trial, even though Mr. Valerius knew that Petitioner subpoenaed Mr. Prats to be there the first day of the trial. Interrogatories were sent to the Defendant and answered by Armando Prats. In the interrogatories were questions concerning any eye witnesses. Each time the question was asked about **"...any eye witness..."** Mr. Prats would answer, **"None,"** or **"Unknown..."** During testimony, Mr. Prats was asked if he had received the interrogatories and had answered them. Mr. Prats responded, **"Yes!" (TT 237).** There were several more questions asked concerning this matter.

**MR. WALSH:** Did you look at this incident report when these interrogatories were sent to you?

**MR. PRATS:** Not really. **(TT 229).**

**MR. WALSH:** Did you know, did you inquire if there were

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***conceal an eye witness that saw Plaintiff slip and fall and what caused the accident. This witness was concealed from June 1990, until found on May 11, 1991. Counsel kept repeating, **"No witness, no case."**

any eye witnesses?

**MR. PRATS:** No. **(TT 230).**

**MR. WALSH:** You never knew? You didn't care?

**MR. PRATS:** No, I didn't care. **(TT 230).**

**MR. WALSH:** It just wasn't important?

**MR. PRATS:** No! **(TT 231).**

Petitioner asked Mr. Prats if he had seen the incident report:

**MR. WALSH:** Have you ever looked at the incident report, Mr. Prats?

**MR. PRATS:** Yes. **(TT 237).**

**MR. WALSH:** When did you look at the incident report.

**MR. PRATS:** I received all the papers from the Plaintiff. I had to pull it out and look it up.

So Mr. Prats was lying to. The jury didn't care. They weren't allowed to see the difference. Petitioner had Mr. Prats on the stand about to testify that Thomas Valerius was lying when the Court stopped him.

**MR. WALSH:** Mr. Prats, you are the corporate representative? **(TT 226).**

**MR. PRATS:** Definitely. **(TT 226)**

**MR. WALSH:** How long have you been corporate representative during this case? **(TT 226)**

**MR. VALERIUS:** I object, Your Honor.

**THE COURT:** I think it is obvious too. The jury has been here the whole time. Let's get to another question, Mr. Walsh.

What other question would the Court want? Mr. Prats was about to expose this deception that Thomas Valerius had

been doing to this jury and the Court would not allow this to happen.

With the help of the maitre d's of the West Palm Beach and Miami areas, the eye witness, Ben Geller was found. Petitioner demanded that a deposition be taken of the registered nurse employed by the Defendant. This deposition was taken on July 31, 1991.*

As this Court reviews Mr. Prats remarks and knowing that the incident report has always had the name of Ben Geller as eye witness, this Court will understand why defense counsel, Thomas Valerius did not want Armando Prats at the trial and had to introduce an imposter as Corporate Representative. **(TT 82).**

**MR. VALERIUS:** The other question obviously, my organization. Mr. Fuentas, Anthony Fuentas, is the Corporate Representative. **(TT 82).**

**MR. VALERIUS:** He is not my client. He is the representative of the corporation. **(TT 82).**

When a lawyer makes a statement like this, something is wrong. Ben Geller explained what it was. Tony Fuentas

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* During the deposition of the registered nurse, an incident report was discovered. On the report, under the heading, Eye Witness #1, was written the name of Ben Geller and his telephone number. Counsel asked the nurse, **"How long has this name and number been on the report?"** The nurse answered, **"I wrote it on the report the night of the accident." (Dep. 15).**

could not be the corporate representative as he was terminated on December 26, 1989. **(TT 181). Mr. Geller began to get very agitated with the Court and Thomas Valerius. Mr. Geller was told to leave the courtroom or as the Court stated, "...anyone who by chance will be a witness."** However, Mr. Geller saw the Court allowing Tony Fuentas to sit through voir dire and opening statement, just because Thomas Valerius deceived the Court.

Petitioner motioned for a mistrial and this was denied by the Court. **(TT 209).** When Mr. Valerius heard this he began to change his story.

**MR. VALERIUS:** Your Honor, this is a corporation...Mr. Prats...the corporate representative could not afford three or four days in Court. They have assigned the most knowledgeable...Tony Fuentas. **(TT 101).** **

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** Defense Counsel, Thomas Valerius, had Tony Fuentas come to his office before the trial began on the first morning.

**MR. VALERIUS:** And did you come to my office yesterday morning?

**MR. FUENTAS:** Yes, I did. **(TT 193)**

**MR. VALERIUS:** And did we talk about, do you remember William Walsh?

**MR. FUENTAS:** Yes, we did, sir. **(TT 194).**

**MR. VALERIUS:** Did you tell me you didn't remember William Walsh from Adam's house cat?

**MR. FUENTAS:** Yes, I did. **(TT 194)**

**MR. VALERIUS:** Did you tell me you didn't remember anything about this fall?

**MR. FUENTAS:** I certainly told you that. **(TT 194).**

Then, Thomas Valerius, realized that the direction he was heading had no foundation of truth. He changed his story once again.

**MR. VALERIUS:** Isn't it a fact that the reason you sat over there is because I told you, come sit over here, Tony?

**MR. FUENTAS:** Yes, you did, sir. **(TT 195).**

**MR. VALERIUS:** I just asked, are you available, if in fact I had to make a decision who is to sit next to me?

**MR. FUENTAS:** I would be. **(TT 195.**

**MR. VALERIUS:** You were just listening to this lawyer who said, sit down here, Tony?

**MR. FUENTAS:** That's right, sir. **(TT 196).**

The trial court had gotten involved earlier, however, did nothing to stop this deception.

**THE COURT:** I don't believe the representative can be a non-employee sitting at counsel's table. **(TT 102).**

The trial court did nothing to remove the imposter from sitting at counsel's table, even though the Court ruled as it did.

**MR. WALSH:** Why did we go to trial if there wasn't a representative for the Defendant sitting at that table? **(TT 208).**

**THE COURT:** The Defendant is not required to have a representative if it doesn't choose to one. **(TT 208).**

How can this Court say something like this when this Court has heard all the lies, deceptions and misrepresentations by defense counsel, Thomas Valerius. Yet, a better question, how did the Third District Court of

Appeal affirm their opinion after reading an appeal such as this? Where is it said, **"...and Justice for all?"**

Throughout the entire trial transcript Defendant's employee's or former employee's misrepresented the truth. They knew they were doing this, defense counsel, Thomas Valerius knew this and the Court knew this. Petitioner only wants someone to read this entire trial transcript. Just because someone has the title of lawyer or Judge doesn't mean that something like this can't happen. Petitioner's reply has to prove this. Everything Petitioner states is recorded in these trial transcripts.

Thomas Valerius had Tony Fuentas state that he was working the night in question, however, Petitioner found out that he wasn't. This is why he knew nothing about **"...William Walsh,"** or **"...the accident."** The nurse stated that she only talked to Tony Fuentas and he pointed out the man that **:...slipped and fell." (TT 424).** Tony Fuentas stated, **"...I never talked to her." (TT 221).** Tony Fuentas stated, **"My assistant told me about the accident at 10:15, 10:30." (TT 222).** His assistant wasn't even working the night in question." **(Int. May 20, 1991).**

Everything can't be blamed on Mr. Valerius. Mr. Lowe, handling the appeal and now this writ, is just as bad. He either quotes a portion of the trial transcript or misquotes all of it.

In his Statement of the Facts, he says, **"Walsh himself admitted that what caused me to fall, I do not know."** This is a true statement, however, not a complete

statement. The trial transcript also reads, **"I said I can't tell you, it could have been ice, ice water, butter, or even a napkin." (TT 673).**

The incident report written by the nurse states, **"...slipped on a napkin and fell."**

The eye witness, Mr. Ben Geller said, **"...two waiters collided, spilling food and drinks to the steps...where Mr. Walsh fell." (TT 330).**

Then Mr. Valerius stated, **"Could have been nothing." (TT 637).**

Mr. Lowe says, **"He conceded that it was possible that he tripped over his own feet."* (TT 673). (Opp. 3).** What a travesty of justice. Mr. Lowe makes a statement and whether it is true or not wants this Court to believe it to be fact.

Mr. Lowe, tells this Court, **"Walsh, a pro se litigant, totally ignorant of the Rule of Evidence..." (Opp. 9).**

If these rules say that someone is allowed to deceive

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* Petitioner is being cross examined by defense counsel, Thomas Valerius:

**MR. VALERIUS:** Mr. Walsh, do you sincerely, you don't know what you slipped on...**(TT 673).**

**MR. WALSH:** It's possible, I don't know...**(TT 673).**

**MR. VALERIUS:** You could have tripped over your own feet?

**MR. WALSH:** I didn't trip over my own feet. I know I didn't trip over my own feet. **(TT 673)**

and misrepresent the facts, then Mr. Lowe is right. However, as I have pointed out to this Court, Mr. Lowe either makes a statement without making sure it is true or doesn't care if it is true and says it anyway. Mr. Lowe is right about one thing, I am a pro se litigant, not of my choosing, but I am anyway, and I don't know that much about the law. I relied on the trial court to make sure I received a fair trial. I lost out there. I relied on the Third District Court of Appeal to see that justice prevailed and I lost there too. I am relying on this Court to make sure every Constitutional Right that I have is not wavered and that as the 14th Amendment says, **"...due process of the law and equal protection of the law."** This is why this Writ of Certiorari must be granted.

Mr. Lowe mentiones that Ben Geller was in the dining room on Saturday evening, November 18, 1989. **(Opp. 3).** Mr. Geller testified as did Tony Fuentas, **"They only come on Saturday night."**

Mr. Lowe states, **"He was the only witness who testified about two waiters colliding."*** **(Opp. 3).** Who knows if this was the only witness. Could the Defendant be concealing more? He concealed Mr. Geller for almost a year.

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* Armando Prats was asked, **"...is nurse Riley required to take statements of any eye witnesses? (TT 235).** Mr. Prats answered, **"If there is any, yes. (TT 235).**

Nurse Riley was asked, **"...did you inquire of anyone in the dining room whether they had witnessed Mr. Walsh's fall?"** Riley said, **"No! (Dep 15**

Mr. Lowes states, **"Geller admitted that he didn't inspect the area..."** Mr. Lowe fails to report to this Court that the interrogatories that Armando Prats was asked and answered, **"Did any person known to the Defendant inspect the area where the Plaintiff was injured after the Plaintiff's accident."** Mr. Prats answered the question, **"None." (Int. 15).** The Defendant's employees didn't even inspect the area. Mr. Geller was an invitee and this was not his responsibility.

Again, Mr. Lowe tries to mislead this Court when he refers to **"Disputed medical testimony..."** (Opp. 3).**

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** This is the statement that was given during direct examination. On cross examination the doctor gave Petitioner another statement.

**MR. WALSH:** Dr. Kalbac, did you see the x-rays taken on January 31, 1990?

**DR. KALBAC:** No, all I have are the reports. I have no x-rays, just reports. **(TT 528)**

**MR. WALSH:** What did the report state on January 31, 1990.

**DR. KALBAC:** Sprained knee with patello femoral contusion. **(TT 528).**

**MR. WALSH:** If your colleague told you that on January 31, 1990, the x-ray showed a normal knee, no arhtritis, and now, some thirty-two months later you take an x-ray and see degenerative arthritis. Would that mean that some happened between November, 1989, and the time that you took another x-ray and said there is arthritis? **(TT 528).**

**DR. KALBAC:** Yes. **(TT 529).**

**DR. KALBAC:** I said I saw minimum arthritis. **(TT 519)**

**MR VALERIUS:** In other words, the first stage, is that right?

**DR. KALBAC:** Yes. **(TT 520).**

Mr. Lowe states that Dr. Joseph Kalbac, I.M.E. hired by the Defendant, testified that Walsh had a strained knee as a result of the accident. **"The authroscopic surgery...was a result of a long term arthritic degenerative condition."** This doctor only had access to the report. The reports stated, **"...sprained knee with petello femoral contusion."** Dr Thomas Brodrick who was the orthropedic surgeon who did the authroscopy stated, **"...patello femoral contusion is taking a lick or hit on the knee, driving the knee-cap up against the femur."**

A video deposition was taken of Dr. Thomas Brodrick, M.D. Orthopedic surgeon. During the viewing of the video the trial judge and defense counsel, Thomas Valerius left the courtroom. The Court told the jury, **"I'm right next door if I'm needed for anything."** The Judge might as well told the jury, **"The video isn't important so I'm not staying."** The judge should have stayed there anyway. There were some questions come up that the Court couldn't rule on.

**THE COURT:** Did Dr. Brodrick relate to the arthroscopy during his testimony? **(TT 646).**

**THE COURT:** I guess I need to look at the Dr. Brodrick deposition, because I didn't sit through it. **(TT 646).**

Finally, Mr. Lowe says, **"Walsh attempted to relate...a surgical procedure to his abdominal area...to the accident. The trial court refused to permit the doctor to testify because the doctor stated that she could not testify within reasonable degree of medical probability that the accident at issue was causually related to the surgery..."**

**DR. GAHTAN:** I was told not to make cause effect...**(TT 50**
**THE COURT:** Then, Mr. Walsh, you just call her to the witness stand and ask her the questions...**(TT 49).**
**MR. VALERIUS:** That begins a precarious problem. I didn't know you were going to get this witness under the authority of the VA. She comes here as a records custodian. However, she has been told by her administrator, she is not entitled to give opinions. She is willing to tell us everything as a records custodian. **(TT 50).**

The doctor said that she had a letter from the VA. **(TT 53),** however, we all have that same letter. The trial court, defense counsel, Thomas Valerius, Dr. Gahtan and the Petitioner all received the same letter from Richard A. Silver, Director of the James A. Haley VA Hospital, Tampa Florida. This letter states, **"The Department of Veterans Affairs has not asserted an interest in this case and for which Dr. Vivian Gahtan will function as a private practioner."** The letter further states, **"...for this litigation, Dr. Gahtan will function as a private physician if required to respond to this subpoena."** There was no other letter except for the one that was made up in the minds of the doctor and defense counsel, Thomas Valerius. This doctor was never told by the VA not to testify. She said during her deposition, **"My attorney told me not to give opinions or causation."**

The Court knew that this doctor couldn't answer this subpoena, but also had read the letter from the VA. **(TT 8).**
**THE COURT:** Here is the problem we have Mr. Walsh. She is an employee of the federal government. Generally

speaking, federal government employers take the position that their employees are not bound to respond to subpoenas in a State Court. **(TT 51).**

Once Mr. Valerius became aware that the Court was going to allow this doctor to testify, everything for the sake of wrong was done.

**THE COURT:** You have to talk about whether you want fact or expert opinion. **(TT 55).**

**MR. WALSH:** All I am asking is that she answer that I was in the hospital during that time and she operated on me and nothing else. **(TT 55).**

**THE COURT:** Then we all seem to be - - **(TT 55).**

**MR. VALERIUS:** No, I stand out from that croud for a moment. In fairness to you, Judge, **surgery was done a year and six months after the fall.** So my point is it is not even timely connected. **(TT 56).**

Mr. Valerius knew that if this doctor testified that she and her hospital records would prove causation. Mr. Valerius knew these records stated:

**SUMMARY OF PERTINENT DIAGNOSIS:** Patient reports falling at the racetrack causing his initial hernia. This was written on 4/08/91, one day before the surgery. This was agreed to by Dr. Murphy, Dr. Gahtan, Dr. Tannenbaum and their supervisor, Dr. Rand. Surgery was scheduled and performed the next day, 4?09/91, by Vivian Gahtan, M.D.

**HOSPITAL COURSE:** Patient was admitted and was seen by indoctrinal to be placed on a study by Dr. Rand. His preoperative evaluation was found to be within the normal

limits, as the patient reports falling at the racetrack causing his initial hernia. The patient was taken to surgery where he underwent an incisional herniography with marlex mesh. See Operative reports for details. This was signed by Dr. Rand and Dr. Tannenbaum.

**OPERATIVE REPORT:** Surgeon: Dr. Vivian Gahtan. First assistant: Dr. Phillip A. Anderson. Major operation diagnosis: Patient had done well until patient fell on his abdomen and **later evolved ventral hernias with multiple defects or at least forcible defects in facia.** The patient has been informed of the risks of infection especially from the marlex mesh and the likely need for the mesh. He has also been informed of the risk of hemorrhage and recurrence. This was signed by Vivian Gahtan, M.D., surgeon.

**PROGRESS REPORT:** Dated 5/31/91. Marlex mesh prolene has entered the abdomen. Told patient it cannot be removed. Should not be any risk. This was signed by Vivian Gahtan.

**PROGRESS REPORT:** Dated 7/08/91. General surgery Clinic. Patient having light blood come out. Evidence of hernia recurrence. This was signed by Vivian Gahtan.

The entire surgical team agreed the causation was the fall at the racetrack. Dr. Gahtan had no restrictions except for what was placed on her by Thomas Valerius. Yes, he had a **"...precarious problem," (TT 50),** and he was going to do everything possible not to have this doctor testify.

Under the 14th Amendment and every other Amendment of the Constitution of the United States, the trial

court deprived the Petitioner of life, liberty or property, without due process of the law and the equal protection of the law.

28 U.S.C. § 1257 is why this Writ should be granted. Mr. Lowe says that Petitioner's constitutional claims are entirely without merit and were not preserved for appeal. This reply brief proves the merit of Petitioner's claim, however, this Court can go beyond this scope and grant this writ.

There were three questions presented to this Court, however, Mr. Lowe only wants to talk about two. Petitioner did bring these questions before the Third District Court of Appeal, the highest Court the Petitioner was allowed to appeal to because of the affirmed opinion. The page numberts are as follows:

Question #1: **(Int. Br. 5, 6, 16, 17). (Rep. Br. 5, 6, 16, 17)**

Question # 2: **(Int. Br. 5, 13, 14, 15, 16).**

Question #3: **(Int. Br. 19,20). (Rep. Br. 16, 17).**

Mr. Lowe must not have read the Initial Brief or the Reply Brief of the Petitioner, or believes this Court will accept something just because he says it is true.

Mr. Lowe states that **"...defense made reference to the procedure to rebut Petitioner's lost wages claim." Defense counsel, Thomas Valerius said during opening statement,** "The evidence would show he underwent other surgeries unrelated to this accident, unrelated. No doctor is going to come in and say they are related and he was out of work for those problems. **(TT 140)**

Petitioner made quotes from the trial transcript, pages

270, defense counsel was cross examining Ken Grimes. Each time defense counsel asked about whether Mr. Grimes knew that I had missed work because of the stomach operation, Mr. Grimes said, no. The trial court and Thomas Valerius ordered the Petitioner that he was not allowed to talk about the stomach operation.

**MR. VALERIUS:** Judge, I hear you saying things and you and I as men who practice law, you being a Judge, mean certain things to you and I. Bill, do you understand, you cannot report to the jury that your stomach was injured and you needed that surgery as a result of the fall? **(TT 471).**

**THE COURT:** Not lumps in your stomach. The only thing you can talk about is the time lost from work because of the stomach problems. **(TT 471).**

**THE COURT:** You are not going to talk about the mesh and all of the details of the surgery. You can't attribute the stomach problems to the fall. You follow?

The trial court had warned me earlier about the rules of Court:

**THE COURT:** Well, Mr. Walsh, again this is another of the compendium of problems that you are going to have because you are trying this case yourself rather than through a lawyer. I guess I relied on the trial judge to make sure that I received a fair and non-prejudicial trial.

Mr. Lowe's last quote really is what this is all about. **"Any Error was Harmless."** There is no errors in lies, misrepresentations or deceptions. These are the reasons that Petitioner lost the case and has lost everything. This is not

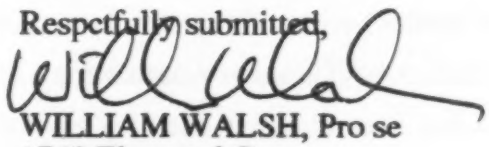
what our country is all about. This is not one of those cases where someone is trying to bring attention to a cause. This is a real case with real lies, misrepresentations and deceptions. A case where the Plaintiff never had a chance because of the trial court. Thomas Valerius may have been the mastermind to this deception, but the trial court allowed them.

God help our country if things like this is allowed to go on without being investigated. Thank you.

## CONCLUSION

For these reasons, the Petition for Writ of Certiorari should be granted.

Respctfully submitted,



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